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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Definition of the Markets for Purposes)
of the Cable Television Broadcast signal)
Carriage Rules)

CS Docket No. 95-178

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

COMCAST CABLE COMMUNICATIONS, INC.
COXCOM, INC.

Peter H. Feinberg
Jeffrey J. Gee

DOW, LOHNES & ALBERTSON PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

Their Attorneys

August 25, 1999

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OPPOSITION TO PETITION FOR RECONSIDERATION

CoxCom, Inc. ("Cox") and Comcast Cable Communications, Inc. ("Comcast"),
by their attorneys, hereby file this Opposition to the Petition for Reconsideration filed by
Costa de Oro Television, Inc., licensee of television station KJLA(TV) ("KJLA"),
Ventura, California, on July 26, 1998.

In its Petition, KJLA requests that the Commission reconsider its conclusion that
"it would leave intact final market modification cases in order to avoid disturbing settled
expectations, and decisions to delete a community from a market would remain in effect
after the conversion to DMA market definition."¹ KJLA contends that this policy is
wrong because although the policy may make sense if the market has not changed,
"where a change from an ADI to a DMA market definition results in a new market for a

¹ Petition for Reconsideration of Costa de Oro Television, Inc., CS Docket No. 95-178 at 8 (filed July 26, 1999)("Petition"), citing Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, *Order on Reconsideration and Second Report and Order*, CS Docket No. 95-178, FCC 99-116, ¶¶42-43 (May 26, 1999)("Order").

Station, decisions based on a party being in another market should not have precedential effect, and the DMA should control.”²

The Commission should deny KJLA’s Petition. KJLA’s assignment to a new market for the next must carry election period, in this case Los Angeles DMA, does not affect the factual and policy determinations which the Cable Services Bureau (“Cable Bureau”) previously made when it concluded that KJLA was not a local signal in various communities located in the Los Angeles ADI.³ Its failure to provide Grade B coverage and a good quality signal, to provide local programming of interest to the affected cable communities, and its historical lack of carriage in these communities, among other factors, is not washed away simply because it will be assigned to the Los Angeles DMA during the next election period.⁴ In its *Order* the Commission concluded that where it “has previously decided to delete a community from a station’s ADI market, that deletion will remain in effect after the conversion to DMAs.”⁵ The Commission made this determination with good reason: not only would the expectations of parties based on a final Commission determination be changed, they would be forced to relitigate the very same issues that had already been determined in earlier ADI modification proceedings. This would plainly amount to a waste of resources, both for litigants and the Commission.

² Petition at 8.

³ See Petition of Costa de Oro Television for Modification of Market of Station KSTV-TV, *Memorandum Opinion and Order*, 13 FCC Rcd 4360 (1998)(“*Costa de Oro*”).

⁴ *Id* at 4371-73.

⁵ *Order* at ¶43. The Commission noted, however, that it “would leave intact final market modification cases that have not been appealed and/or cases that have been subject to final Commission review so as to avoid disturbing settled expectations.” *Order* at ¶42.

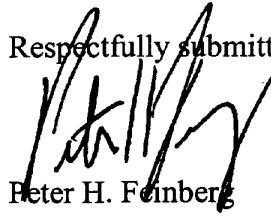
In this case, the Bureau has already refused to modify KJLA's market to require carriage in Communities served by Cox and Comcast.⁶ In the *Costa de Oro* proceeding, KJLA requested that the Bureau reconsider its determinations with regard to some of the communities at issue. Its petition for reconsideration is presently pending before the Bureau. The issues in the pending proceeding are dispositive of whether KJLA should be entitled to carriage in these communities, regardless that it will be assigned to the Los Angeles DMA, and it is most appropriate that KJLA's carriage rights be adjudicated in that proceeding.

In conclusion, the Bureau has already determined that carriage of KJLA was not warranted in the Cable Communities served by Cox and Comcast. KJLA has provided the Commission with no compelling reasons why it should discard this determination and its conclusion made in the *Order* that findings of prior ADI modifications should stand.

⁶ The Cable Bureau found that the station (then KSTV-TV) (i) had no history of carriage on any cable system in the communities involved or in any nearby communities; (ii) provided an insufficient signal to "an undisclosed number of the communities;" (iii) provided no programming specifically targeted to the local communities; (iv) was geographically distant from the communities and separated from Los Angeles by the Santa Monica Mountains, Simi Hills and Santa Susana Mountains; (v) had no measurable audience within any of the communities in question; and (vi) had no program listings in any local newspapers, TV Guide or other listings of station programming. *Costa de Oro* at 4371-73. The Bureau stated that "with respect to the cable communities that are outside of the predicted Grade B service area of KSTV-TV, no significant evidence has been presented that suggests that KSTV-TV is in any sense local or that it is in the same market as these cable communities such that extension of its existing market would 'better effectuate the purposes' of Section 614." *Id.* at 4373. In the face of such findings and conclusions by the Cable Bureau, KJLA's assertion that it should suddenly become entitled to carriage in these communities merely because it is part of the Los Angeles DMA rather than the Santa Barbara ADI is nothing short of incredible.

For the foregoing reasons, the Petition for Reconsideration should be denied

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter H. Feinberg', written over the typed name.

Peter H. Feinberg
Jeffrey J. Gee

DOW, LOHNES & ALBERTSON PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

Attorneys for


Comcast Cable Communications, Inc. and
CoxCom, Inc.

August 25, 1999

CERTIFICATE OF SERVICE

I, Cynthia M. Forrester, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 25th day of August 25, 1999, the foregoing "Opposition to Petition for Reconsideration" was served via first class mail (except where hand delivery is noted by an asterisk) to the following:

Barry A. Friedman, Esq.
Andrew S. Hyman, Esq.
Thompson Hine & Flory LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
On behalf of COSTA De Oro Television, Inc.


Cynthia M. Forrester